

AMENDED IN ASSEMBLY SEPTEMBER 12, 2009

AMENDED IN ASSEMBLY SEPTEMBER 4, 2009

AMENDED IN ASSEMBLY JULY 14, 2009

AMENDED IN ASSEMBLY JUNE 29, 2009

AMENDED IN SENATE APRIL 27, 2009

AMENDED IN SENATE APRIL 22, 2009

AMENDED IN SENATE APRIL 16, 2009

AMENDED IN SENATE APRIL 1, 2009

SENATE BILL

No. 388

Introduced by Senator Calderon

February 26, 2009

~~An act to add and repeal Section 2830.1 of the Public Utilities Code, relating to energy.~~ *An act to add and repeal Section 40440.15 of the Health and Safety Code, and to add Section 21080.06 to the Public Resources Code, relating to the South Coast Air Quality Management District.*

LEGISLATIVE COUNSEL'S DIGEST

SB 388, as amended, Calderon. ~~Renewable energy resources.~~ *South Coast Air Quality Management District: emission reduction credits: California Environmental Quality Act.*

(1) Under existing law, every air pollution control district or air quality management district in a federal nonattainment area for any national ambient air quality standard is required to establish by regulation, a system by which all reductions in emissions of air

contaminants that are to be used to offset certain future increases in the emission of air contaminants are banked prior to use. The South Coast Air Quality Management District promulgated various rules establishing offset exemptions, providing Priority Reserve offset credits, and creating or tracking credits used for offset exemption or Priority Reserve projects. In Natural Resources Defense Council v. South Coast Air Quality Management District (Super. Ct. Los Angeles County, 2007, No. BS 110792), the superior court found the promulgation of certain of these district rules to be in violation of the California Environmental Quality Act (CEQA).

This bill would require the executive officer of the South Coast Air Quality Management District, upon making a specified finding, to transfer emission reduction credits for certain pollutants from the south coast district's internal emission credit accounts to eligible electrical generating facilities, as described. The bill would exempt those actions from CEQA. By imposing these duties on the South Coast Air Quality Management District, the bill would impose a state-mandated local program. These provisions would be repealed on January 1, 2013.

(2) This bill would state the findings and declarations of the Legislature concerning the need for special legislation.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including electrical corporations, as defined. Existing law authorizes a local government, as defined, to receive a bill credit, as defined, to a designated benefiting account for electricity exported to the electrical grid by an eligible renewable generating facility, as defined, and requires the commission to adopt a rate tariff for the benefiting account. The existing definition of a local government excludes a joint powers authority, the state, and any agency or department of the state. The existing definition of a "bill credit" provides that the amount of the credit is based upon the time-of-use electricity generation component of the electricity usage charge of the generating account.~~

~~This bill, until January 1, 2013, would authorize a local government that is or is within an economically distressed county, as defined, to~~

~~receive a bill credit to a designated benefiting account for electricity exported to the electrical grid by an eligible photovoltaic generating facility, as defined, and requires the commission to adopt a rate tariff for the benefiting account. The bill would include an individual community college campus, California State University campus, or a University of California campus within the definition of a local government and would define a bill credit so that the amount of the credit is based upon the time-of-use electricity usage charge of the generating account and not the electricity component of the charge. The bill would provide that a local government electing to take service pursuant to the rate tariff is eligible to receive ratepayer funded incentives pursuant to the California Solar Initiative, as defined, for facilities that are sized to meet the onsite load and the load of the designated benefiting account.~~

~~Under existing law, a violation of the Public Utilities Act or an order or direction of the commission is a crime. Because the provisions of this bill would require an order or other action of the commission to implement, and a violation of that order or action would be a crime, the bill would impose a state-mandated local program by creating a new crime.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 40440.15 is added to the Health and
2 Safety Code, to read:
3 40440.15. (a) The executive officer of the south coast district,
4 upon finding that the eligible electrical generating facility proposed
5 for certification by the State Energy Resources Conservation and
6 Development Commission meets the requirements of the applicable
7 new source review rule and all other applicable district regulations
8 that must be met under Section 1744.5 of Title 20 of the California
9 Code of Regulations, shall credit to the south coast district's
10 internal emission credit accounts and transfer from the south coast

1 district's internal emission credit accounts to eligible electrical
2 generating facilities emission credits in the full amounts needed
3 to issue permits for eligible electrical generating facilities to meet
4 requirements for sulfur oxides (SOx) and particulate matter (PM2.5
5 and PM10) emissions.

6 (b) In implementing subdivision (a), the district shall rely on
7 the offset tracking system used prior to the adoption of Rule 1315
8 of the south coast district until a new tracking system is approved
9 by the United States Environmental Protection Agency and is in
10 effect, at which point that new system shall be used by the south
11 coast district. In addition to using the prior offset tracking system,
12 the district shall also make use of any emission credits that have
13 resulted from emission reductions and shutdowns from minor
14 sources since 1990. The district shall make any necessary
15 submissions to the United States Environmental Protection Agency
16 with regard to the crediting and use of emission reductions and
17 shutdowns from minor sources.

18 (c) Within 60 days of the effective date of this section, for each
19 eligible electrical generating facility, the south coast district shall
20 report to the State Energy Resources Conservation and
21 Development Commission the emission credits to be credited and
22 transferred pursuant to subdivision (a). The State Energy
23 Resources Conservation and Development Commission shall
24 determine whether the emission credits to be credited and
25 transferred satisfy all applicable legal requirements. In the exercise
26 of its regulatory responsibilities under its power facility and site
27 certification authority, the State Energy Resources Conservation
28 and Development Commission shall not certify an eligible electrical
29 generation facility if it determines that the credit and transfer by
30 the south coast district does not satisfy all applicable legal
31 requirements.

32 (d) In order to be eligible for emission reduction credits
33 pursuant to this section, an electrical generating facility shall meet
34 all of the following requirements:

35 (1) Be subject to the permitting jurisdiction of the State Energy
36 Resources Conservation and Development Commission.

37 (2) Have a purchase agreement, executed on or before
38 December 31, 2008, to provide electricity to a public utility, as
39 defined in Section 216 of the Public Utilities Code, subject to

1 *regulation by the Public Utilities Commission, for use within the*
2 *Los Angeles Basin Local Reliability Area.*

3 *(3) Be under the jurisdiction of the south coast district.*

4 *(4) Be located within the City of Industry.*

5 *(e) The executive officer shall not transfer emission reduction*
6 *credits pursuant to this section to an electrical generating facility*
7 *pursuant to the south coast district's Rule 1309.1, as adopted*
8 *August 3, 2007, until the receipt of payment of the mitigation fees*
9 *set forth in the south coast district's Rule 1309.1, as adopted on*
10 *August 3, 2007. The mitigation fees shall only be used for emission*
11 *reduction purposes. The south coast district shall ensure that at*
12 *least 30 percent of the fees are used for emission reductions in*
13 *areas within close proximity to the electrical generating facility*
14 *and at least 30 percent are used for emission reductions in areas*
15 *designated as "Environmental Justice Areas" in Rule 1309.1 of*
16 *the south coast district.*

17 *(f) The executive officer's authority to transfer emission*
18 *reduction credits pursuant to this section shall terminate when the*
19 *executive officer has transferred emission reduction credits in*
20 *amounts that are equal to the aggregate amounts set forth in*
21 *subdivision (a).*

22 *(g) This section shall be implemented in a manner consistent*
23 *with federal law, including the Clean Air Act (42 U.S.C. Sec. 7401*
24 *et seq.).*

25 *(h) This section shall remain in effect only until January 1, 2013,*
26 *and as of that date is repealed, unless a later enacted statute, that*
27 *is enacted before January 1, 2013, deletes or extends that date.*

28 *SEC. 2. Section 21080.06 is added to the Public Resources*
29 *Code, to read:*

30 *21080.06. This division does not apply to the selection, credit,*
31 *and transfer of emission credits by the South Coast Air Quality*
32 *Management District pursuant to Section 40440.15 of the Health*
33 *and Safety Code until the repeal of that section on January 1, 2013,*
34 *or a later date.*

35 *SEC. 3. The Legislature finds and declares that a special law*
36 *is necessary and that a general law cannot be made applicable*
37 *within the meaning of Section 16 of Article IV of the California*
38 *Constitution because of unique circumstances concerning the South*
39 *Coast Air Quality Management District.*

1 *SEC. 4. No reimbursement is required by this act pursuant to*
2 *Section 6 of Article XIII B of the California Constitution because*
3 *a local agency or school district has the authority to levy service*
4 *charges, fees, or assessments sufficient to pay for the program or*
5 *level of service mandated by this act, within the meaning of Section*
6 *17556 of the Government Code.*

7 ~~SECTION 1. Section 2830.1 is added to the Public Utilities~~
8 ~~Code, to read:~~

9 ~~2830.1. (a) It is the intent of the Legislature to promote~~
10 ~~investment in photovoltaic distributed generation by local~~
11 ~~governments in economically distressed counties by expanding~~
12 ~~the incentives available pursuant to Section 2830, but subject to~~
13 ~~the 250-megawatt limitation of subdivision (h) of that section.~~

14 ~~(b) As used in this section, the following terms have the~~
15 ~~following meanings:~~

16 ~~(1) "Benefiting account" means an electricity account, or more~~
17 ~~than one account, located within the geographical boundaries of~~
18 ~~a local government, that is mutually agreed upon by the local~~
19 ~~government and an electrical corporation.~~

20 ~~(2) "Bill credit" means an amount of money credited to a~~
21 ~~benefiting account that is calculated based upon the time-of-use~~
22 ~~electricity usage charge of the generating account, multiplied by~~
23 ~~the quantities of electricity generated by an eligible photovoltaic~~
24 ~~generating facility that are exported to the grid during the~~
25 ~~corresponding time period. Electricity is exported to the grid if it~~
26 ~~is generated by an eligible photovoltaic generating facility, is not~~
27 ~~utilized onsite by the local government, and the electricity flows~~
28 ~~through the meter site and on to the electrical corporation's~~
29 ~~distribution or transmission infrastructure.~~

30 ~~(3) "Economically distressed county" means a county that with~~
31 ~~an unemployment rate of 10 percent or more as determined by the~~
32 ~~Economic Development Department as of January 1, 2010.~~

33 ~~(4) "Eligible photovoltaic generating facility" means a~~
34 ~~photovoltaic solar collector or other photovoltaic solar energy~~
35 ~~device that has a generating capacity of no more than one~~
36 ~~megawatt, is located within the geographical boundary of, and is~~
37 ~~owned, operated, or on property under the control of, the local~~
38 ~~government, and is sized to offset all or part of the electrical load~~
39 ~~of the benefiting account. The geographic boundary of an~~
40 ~~individual community college campus, California State University~~

campus, or University of California campus shall be the limits of the city, county, or city and county in which each is located. For these purposes, premises that are leased by a local government are under the control of the local government.

(5) “Generating account” means the time-of-use electric service account of the local government where the eligible photovoltaic generating facility is located.

(6) “Local government” means a city, county, whether general law or chartered, city and county, special district, school district, political subdivision, or an individual community college campus, California State University campus, or University of California campus, or other local public agency, that is located within an economically distressed county, but shall not mean a joint powers authority, the state or any agency or department of the state, other than a campus of the University of California or the California State University.

(e) Subject to the limitation in subdivision (h) of Section 2830, a local government may elect to receive electric service pursuant to this section, if all of the following conditions are met:

(1) The local government is itself an economically distressed county, or is geographically located within an economically distressed county.

(2) The local government designates one or more benefiting accounts to receive a bill credit.

(3) A benefiting account receives service under a time-of-use rate schedule.

(4) The benefiting account is the responsibility of, and serves property that is owned, operated, or on property under the control of the same local government that owns, operates, or controls the eligible photovoltaic generating facility.

(5) The electrical output of the eligible photovoltaic generating facility is metered for time of use to allow calculation of the bill credit based upon when the electricity is exported to the grid.

(6) All costs associated with the metering requirements of paragraphs (2) and (4) are the responsibility of the local government.

(7) All costs associated with interconnection are the responsibility of the local government. For purposes of this paragraph, “interconnection” has the same meaning as defined in Section 2803, except that it applies to the interconnection of an

1 eligible photovoltaic generating facility rather than the energy
2 source of a private energy producer.

3 (8) The local government does not sell electricity exported to
4 the electrical grid to a third party.

5 (9) All electricity generated by the eligible photovoltaic
6 generating facility shall be counted toward the electrical
7 corporation's total retail sales procurement requirements, but not
8 incremental procurement requirements, pursuant to Article 16
9 (commencing with Section 399.11) of Chapter 2.3 of Part 1.
10 Ownership of the renewable energy credits, as defined in Section
11 399.12, associated with electricity generated by the eligible
12 photovoltaic generating facility shall be the property of the
13 electrical corporation.

14 (d) (1) A benefiting account shall be billed for all electricity
15 usage, and for each bill component, at the rate schedule applicable
16 to the benefiting account, including any cost-responsibility
17 surcharge or other cost recovery mechanism, as determined by the
18 commission, to reimburse the Department of Water Resources for
19 purchases of electricity, pursuant to Division 27 (commencing
20 with Section 80000) of the Water Code.

21 (2) The bill shall then subtract the bill credit applicable to the
22 benefiting account. The amount credited to the benefiting account
23 may not include the cost-responsibility surcharge or other cost
24 recovery mechanism, as determined by the commission, to
25 reimburse the Department of Water Resources for purchases of
26 electricity, pursuant to Division 27 (commencing with Section
27 80000) of the Water Code. The electrical corporation shall ensure
28 that the local government receives the full bill credit.

29 (3) If, during the billing cycle, the electricity usage charges
30 exceed the bill credit, the benefiting account shall be billed for the
31 difference.

32 (4) If, during the billing cycle, the bill credit applied pursuant
33 to paragraph (2) exceeds the electricity usage charges, the
34 difference shall be carried forward as a financial credit to the next
35 billing cycle.

36 (5) After the electricity usage charge pursuant to paragraph (1)
37 and the credit pursuant to paragraph (2) are determined for the last
38 billing cycle of a 12-month period, any remaining credit resulting
39 from the application of this section shall be reset to zero.

1 ~~(e) The commission shall ensure that costs associated with the~~
2 ~~transfer of a bill credit to a benefiting account do not result in a~~
3 ~~shifting of costs to bundled service subscribers. The costs~~
4 ~~associated with the transfer of a bill credit shall include all~~
5 ~~billing-related expenses.~~

6 ~~(f) Not more frequently than once per year, and upon providing~~
7 ~~the electrical corporation with a minimum of 60 days' notice, the~~
8 ~~local government may elect to change a benefiting account. Any~~
9 ~~credit resulting from the application of this section earned prior to~~
10 ~~the change in a benefiting account that has not been used as of the~~
11 ~~date of the change in the benefiting account, shall be applied, and~~
12 ~~may only be applied, to a benefiting account as changed.~~

13 ~~(g) A local government shall provide the electrical corporation~~
14 ~~to which the eligible photovoltaic generating facility will be~~
15 ~~interconnected with not less than 60 days' notice prior to the~~
16 ~~eligible photovoltaic generating facility becoming operational.~~
17 ~~The electrical corporation shall file an advice letter with the~~
18 ~~commission, that complies with this section, not later than 30 days~~
19 ~~after receipt of the notice, proposing a rate tariff for a benefiting~~
20 ~~account. The commission, within 30 days of the date of filing,~~
21 ~~shall approve the proposed tariff, or specify conforming changes~~
22 ~~to be made by the electrical corporation to be filed in a new advice~~
23 ~~letter.~~

24 ~~(h) The local government may terminate its election pursuant~~
25 ~~to subdivision (b), upon providing the electrical corporation with~~
26 ~~a minimum of 60 days' notice. Should the local government sell~~
27 ~~its interest in the generating account, or sell the electricity~~
28 ~~generated by the eligible photovoltaic generating facility, in a~~
29 ~~manner other than required by this section, upon the date of either~~
30 ~~event, and the earliest date if both events occur, no further bill~~
31 ~~credit pursuant to paragraph (3) of subdivision (b) may be earned.~~
32 ~~Only credit earned prior to that date shall be made to a benefiting~~
33 ~~account.~~

34 ~~(i) An eligible photovoltaic generation facility is an eligible~~
35 ~~renewable generating facility for purposes of the 250-megawatt~~
36 ~~limitation of subdivision (h) of Section 2830. An electrical~~
37 ~~corporation is not obligated, pursuant to this section, to provide a~~
38 ~~bill credit to a benefiting account that is not designated by a local~~
39 ~~government prior to the point in time that the combined statewide~~
40 ~~cumulative rated generating capacity of all eligible renewable~~

1 ~~generating facilities, as defined in Section 2830, and eligible~~
2 ~~photovoltaic within the service territories of the state's three largest~~
3 ~~electrical corporations reaches 250 megawatts. Each electrical~~
4 ~~corporation shall only be required to offer service or contracts~~
5 ~~under this section until that electrical corporation reaches its~~
6 ~~proportionate share of the 250-megawatt limitation based on the~~
7 ~~ratio of its peak demand to the total statewide peak demand of all~~
8 ~~electrical corporations.~~

9 ~~(j) A local government electing to take service pursuant to~~
10 ~~subdivision (b) is eligible to receive ratepayer funded incentives~~
11 ~~pursuant to the California Solar Initiative for facilities that are~~
12 ~~sized to meet the onsite load and the load of the designated~~
13 ~~benefiting account. For purposes of this subdivision, "California~~
14 ~~Solar Initiative" means the program providing ratepayer funded~~
15 ~~incentives for eligible solar energy systems adopted by the Public~~
16 ~~Utilities Commission in Decision 05-12-044 and Decision~~
17 ~~06-01-024, as modified by Chapter 8.8 (commencing with Section~~
18 ~~25780) of Division 15 of the Public Resources Code and Article~~
19 ~~1 (commencing with Section 2851) of Chapter 9.~~

20 ~~(k) This section shall remain in effect only until January 1, 2013,~~
21 ~~and as of that date is repealed, unless a later enacted statute, that~~
22 ~~is enacted before January 1, 2013, deletes or extends that date.~~

23 ~~SEC. 2. No reimbursement is required by this act pursuant to~~
24 ~~Section 6 of Article XIII B of the California Constitution because~~
25 ~~the only costs that may be incurred by a local agency or school~~
26 ~~district will be incurred because this act creates a new crime or~~
27 ~~infraction, eliminates a crime or infraction, or changes the penalty~~
28 ~~for a crime or infraction, within the meaning of Section 17556 of~~
29 ~~the Government Code, or changes the definition of a crime within~~
30 ~~the meaning of Section 6 of Article XIII B of the California~~
31 ~~Constitution.~~